

Amendments to Civil Service Rules governing
Employee-Employer Relations

Amendments Approved by the Civil Service Commission
on January 24, 2001, to become effective on
January 1, 2002

The approved amendments are displayed in legislative format:

Added text is underlined. Deleted text is ~~struck through~~.

Index of Rules Amended

3-4	CLASS CLUSTERS.....	2
3-5	RELATION TO COLLECTIVE BARGAINING.....	2
4-5	WORKING OUT OF CLASS	3
6-3	COMMISSION AUTHORITY.....	4
6-6	DETERMINATION OF REPRESENTATION.....	10
6-7	DUES AND FEES.....	12
6-9	NEGOTIATIONS AND IMPASSE.....	13
6-12	COMMISSION REVIEW AND ACTION	14
9-1	DEFINITIONS	15

Chapter 3: Selection

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3-4 Class Clusters

- (a) Approval of class clusters. If jointly requested by parties engaged in secondary negotiations, the state employer may request that the state personnel director approve a class cluster for use in a principal department, autonomous entity, or agency of convenience. The state personnel director has the discretion to approve, deny, or limit a request to create a class cluster. A decision by the state personnel director to approve, deny, or limit a request to create a class cluster is final and cannot be appealed.
- (b) Class clusters for nonexclusively represented employees. An appointing authority may use an approved class cluster for authorized transactions involving nonexclusively represented employees as provided in the civil service rules and regulations.
- (c) Class clusters for exclusively represented employees.
- (1) Relation to collective bargaining.
 - (A) The creation of a class cluster is a classification and appointment issue and is a prohibited subject of bargaining. A class cluster cannot be created or included in a secondary collective bargaining agreement unless approved in advance by the state personnel director.
 - (B) After a class cluster has been approved by the state personnel director, the use of an approved class cluster for job changes, layoff, or recall is a mandatory subject of bargaining in secondary negotiations.
 - (2) Use of class cluster. An appointing authority may use the approved class cluster for job change, layoff, or recall transactions authorized in an approved secondary collective bargaining agreement.

3-54 Relation to Collective Bargaining

An appointing authority shall make all appointments in accordance with the civil service rules and regulations, unless a provision in a collective bargaining agreement regarding reassignment, transfer, layoff, or recall permitted by rule **3-4 and 6-3** provides otherwise.

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Chapter 4: Classification

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4-5 Working out of Class

(a) **Working out of class assignment.** ~~In accordance with civil service rules and regulations, a~~
An appointing authority may temporarily assign an employee to work out of class ~~perform~~
~~duties and responsibilities of another only if (1) the employee is performing the duties and~~
~~responsibilities of an existing position or (2) the department of civil service has approved in~~
~~advance a request for the employee to work out of class. A working-out-of class assignment~~
~~cannot exceed one year. classification appropriately classified by the department of civil~~
~~service.~~

(b) **Working-out-of-class pay.** If an employee is assigned to work out of class for 10 or more
consecutive work days, the employee is entitled to supplemental pay and benefits for the
~~Benefits accrue to an employee in a~~ temporary assignment in accordance with the civil service
rules and regulations. ~~such classification.~~

(1) **Claims for working-out-of-class pay.** If an employee is assigned to work out of class
and does not receive authorized supplemental working-out-of-class pay and benefits, the
employee may request a technical working-out-of-class determination.

(A) **Time limit.** A request for a technical working-out-of-class determination must be
filed during the working-out-of-class assignment or within 28 calendar days after the
end of the assignment.

(B) **Back pay.** In a technical working-out-of-class determination, the civil service review
officer may award back pay and benefits for working out of class for a maximum of
one year before the end of the working-out-of-class assignment. No supplemental
working-out-of-class pay or benefits are payable for any period longer than one year
even if the employee worked out of class for more than one year.

(2) **Relation to collective bargaining.** Working out of class is a prohibited subject of
bargaining. The exclusive procedure for any employee, including an exclusively
represented employee, to bring a claim for working-out-of-class pay or benefits is to file a
request for a technical working-out-of-class determination.

(c) Exclusions Exception. An employee in any of the following circumstances is not considered to be working out of class: ~~Provisions of this rule do not apply to the following employees:~~

(1) ~~The An~~-employee is working in a preauthorized position.

(2) ~~The An~~-employee is occupying in a position downgraded for training.

(3) ~~The An~~-employee is occupying a position that is reclassifiable.

(4) The employee is Aan overall assistant who normally substitutes for the employee's supervisor.

(d) ~~Filing claims.~~ A claim for working out of class must be presented no later than 20 workdays after the working out of class assignment has been discontinued. ~~Retroactivity of any claim is governed by the time limits set forth in these rules and applicable regulations.~~

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Chapter 6: Employee-Employer Relations

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6-3 Commission Authority

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6-3.2 Prohibited Subjects of Bargaining

(a) Prohibitions.

(1) Interpretation or application. ~~No provision of a A~~ collective bargaining agreement, impasse panel recommendation, settlement agreement, or arbitrator's decision under a collective bargaining agreement ~~may cannot~~ be interpreted or applied to violate, ~~or other-wise~~ rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining.

(2) Settlement. An appointing authority or labor organization cannot approve or implement a settlement of any claim or grievance or take any other action that violates, rescinds, limits, or modifies a civil service rule or regulation governing a prohibited subject of bargaining.

(b) **9-1.95—Prohibited subjects of bargaining.** ~~means~~ The civil service authority, policy, rules, regulations, procedures, and practices governing or regulating any of the following are prohibited subjects of bargaining:-

(1) **Classification.** The determination of the classification and grade assignment of a new or existing positions in the classified service. Although ~~The~~ rates of compensation for an existing class of positions is a mandatory subject of bargaining, ~~except that the department of~~ civil service retains the sole authority to establish the initial rate of compensation for a newly-created class of positions when the new classification is included in the official classification plan.

(2) **Selection.** The determination of the qualifications of candidates for positions in the classified service, including, but not limited to, appraisal, probation, and appointment.

(3) **Class clusters.** The determination of classification equivalency or eligibility, including, but not limited to, the creation of class clusters and preauthorized lateral job change lists.

~~(3)~~(4) **Working out of class.** The determination of working out of class, including, but not limited to, (1) whether an employee has worked out of class, (2) the duration of any working-out-of-class assignment, (3) the classification and level of the duties and responsibilities performed while working out of class, (4) the amount of any working-out-of-class pay or benefits due an employee, and (5) the rights of an employee seeking review of a working-out-of-class claim.

~~(3)~~(5) **Disbursements for personal services.** Review and approval or disapproval of requests by agencies to make disbursements for personal services outside the classified service. Notwithstanding this subsection, the following are proper subjects of bargaining:

(A) Notice to the exclusive representative of a request for permission by the appointing authority to make disbursements for personal services outside the classified service.

(B) The obligations to meet and confer regarding the impact of a decision to make disbursements for personal services outside the classified service.

(C) Reasonable efforts on the part of the employer, not involving a delay in implementation, to reduce the impact on current classified employees of a decision to make disbursements for personal services outside the classified service.

~~(4)~~(6) **Political or union activity.** Political activity or union activity by classified employees during actual-duty time.

~~(5)~~(7) **Civil service authority.** The authority of the civil service commission, the department of civil service, and the state personnel director, established by law including the civil service rules and regulations.

(6)(8) System of collective bargaining. The system of collective bargaining created in the civil service rules, the bargaining relationships authorized in the rules, and the limitations, restrictions, and obligations on the collective bargaining parties, collective bargaining agreements, and eligible employees established in the civil service rules and regulations.

(7)(9) Outside the bargaining unit. Conditions of employment outside the bargaining unit.

(8)(10) Patents and copyrights. Compensation related to patents and copyrights.

(9)(11) Union leave. The requirements and limitations on union leave in rule 6-3.10(c).

(10)(12) Strikes. The requirements and limitations on strikes and strike-related grievances.

(13) Excluded positions. The requirements, limitations, and procedures regarding excluded positions in rule 6-6.4

(11)(14) Abolition or creation of positions. The constitutional authority of an appointing authority to create or abolish positions for reasons of administrative efficiency and the Grievance and appeal rights of classified employees aggrieved by the abolition or creation of a position.

6-3.4 Modification after Approval

A primary or secondary collective bargaining agreement approved by the civil service commission remains in force-effect between the parties during its approved term, unless otherwise amended by the commission during its term as provided in rules 6-3.5, 6-3.6, or 6-3.9(c). An amendment to an existing collective bargaining agreement is a quasi-legislative act.

6-3.5 Modification of Agreement or Arbitrator's Decision

Notwithstanding any contrary rule or provision of a collective bargaining agreement, the civil service commission reserves the exclusive authority to determine during the term of a collective bargaining agreement if a provision previously approved has been applied or interpreted to violate or otherwise rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining.

(a) Complaint. Any person may file a complaint with the state personnel director that a collective bargaining agreement or arbitrator's decision or settlement agreement under a collective bargaining agreement has been applied or interpreted to violate or otherwise rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining. The director shall investigate the complaint. After providing notice to the parties and an opportunity to be heard, the director shall determine if a violation has occurred. The definition of prohibited subjects of bargaining shall be liberally construed to enforce the constitutional authority of the civil service commission.

1 **(b) Remedy.** If the state personnel director determines that a violation has occurred, the director
2 shall issue a report of findings to the civil service commission. The director may also take any
3 one or more of the following actions:

4 **(1)** Issue an order to cure or correct the violation.

5 **(2)** Issue an order to enjoin future violations.

6 **(3)** Recommend to the civil service commission that it amend the existing collective bargaining
7 agreement to cure or correct the violation.

8 **(4)** In the case of an arbitrator's decision, the state personnel director may also exercise
9 superintending authority to vacate or modify the decision of the arbitrator or remand the
10 matter to the arbitrator for further consideration.

11 **(c) Appeal.** A party to the collective bargaining agreement who is aggrieved by a final decision
12 of the state personnel director may file an application for leave to appeal to the civil service
13 commission within 14-28 calendar days after the decision is issued.

14 **(d) Exclusive jurisdiction.** The procedures provided in this rule and ~~in~~ the regulations are the
15 exclusive procedures for determining if a collective bargaining agreement, ~~or~~ arbitrator's
16 decision, or settlement agreement has been applied or interpreted to violate or otherwise
17 rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bar-
18 gaining. A provision of a collective bargaining agreement, including a grievance procedure per-
19 mitted by rule 6-9.6, cannot replace, interfere with, or limit this exclusive jurisdiction or the
20 superintending authority of the state personnel director or the civil service commission.

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22 6-3.9 Limitations on Term of Collective Bargaining Agreements

24 **(a) Division of agreement.** A primary collective bargaining agreement may be undivided or may
25 be subdivided into two sections. If the agreement is divided, the parties shall divide it, to the
26 extent practicable, into one subsection with only economic provisions and one subsection with
27 only noneconomic provisions. When a provision is submitted to the civil service commission or
28 an impasse panel for review, each provision must be clearly marked to indicate whether it is
29 included in the economic subsection or the noneconomic subsection.

30 **(b) Limitation on term.** Each collective bargaining agreement must contain an effective date and
31 a termination date. If the agreement is subdivided into economic and noneconomic sections,
32 the subsections may have different effective and termination dates. However, the maximum
33 term of a unitary agreement, section of a subdivided primary agreement, or provision in an
34 agreement cannot exceed 3 years.

1 (c) **Rates of compensation; legislative.** After the civil service commission approves a
2 collective bargaining agreement, the state personnel director shall give annual notice of
3 approved increases in the rates of compensation to the governor for transmittal to the leg-
4 islature as part of the governor's budget. If the legislature rejects or reduces the increases in
5 rates of compensation approved by the commission, the commission shall amend the collective
6 bargaining agreement to conform to the legislative action.

7 (d) **Evergreen provisions prohibited.** A provision of a primary or secondary collective
8 bargaining agreement cannot authorize a provision of that agreement to be automatically
9 extended beyond 3 years or beyond the approved expiration date of the primary agreement,
10 whichever occurs earlier. If the parties agree that a provision of ~~the an~~ agreement should
11 continue in effect beyond the earlier of 3 years or the approved expiration date without further
12 negotiation, the parties must resubmit the entire agreement to the civil service commission for
13 review as provided in rule 6-12.

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16 6-6 Determination of Representation

17 6-6.1 Unit Determination and Redetermination

18 (a) **Unit determination.** The state personnel director shall legislatively establish the most
19 appropriate units of eligible employees organized along broad occupational lines with a
20 community of interest.

21 (b) **Unit redetermination.** The director, upon request of the state employer or a labor
22 organization, may abolish, redefine, realign, or merge, in whole or in part, recognized units, if
23 the director determines that the existing units are no longer the most appropriate units. The
24 state employer and all labor organizations that may be affected by a change in the existing units
25 shall meet and discuss the proposed changes before a request is filed with the director.

26 (1) Any abolition, redefinition, realignment, or merger of a unit takes effect only at the end of
27 the term of an affected collective bargaining agreement, unless the state employer and the
28 exclusive representative agree to an earlier date.

29 (2) The state employer or a labor organization may file with the civil service commission an
30 application for leave to appeal a unit determination by the director. The application must
31 be filed within 14-28 calendar days after the director's decision is released. The director's
32 decision is stayed if a timely application is received by the commission ~~or employment~~
33 relations board.

1 **(c) Exceptions.** This rule applies only to the actions to redefine recognized units. This rule does
2 not apply to actions that result from (1) the creation or abolition of one or more classifications,
3 (2) the merger of two or more existing classifications into a single classification, or (3) the
4 designation of an eligible position as an excluded position.

5 **(d) Transfer of recognition rights.** Two or more existing exclusive representatives may agree to
6 combine some or all of their existing business operations and staff. Any such combination that
7 results in a transfer of recognition rights is subject to the review and approval of the state
8 personnel director and requires the prior affirmative vote of a majority of the members voting.

9 **6-6.2 Petition for Election; Showing of Interest**

10 **(a) Petition for election.** An eligible employee, or any individual or labor organization acting on
11 behalf of an eligible employee, may petition for a unit election. The petition must be accompa-
12 nied by suitable evidence that at least 30 percent of the eligible employees in the unit either
13 want to be represented by another identified organization or no longer want to be represented
14 by an exclusive representative.

15 **(b) Showing of interest.** The state personnel director shall order an election if the director finds a
16 bona fide question of representation exists and the petitioner shows the interest of 30 percent
17 or more of the eligible employees actively at work in the unit. Otherwise, the director shall
18 dismiss the petition as insufficient. Although the director shall consider any irregularity that
19 might otherwise preclude the existence of a bona fide question of representation, the sufficiency
20 of showings of interest is a matter for administrative determination. The director's decision is
21 not subject to collateral attack by the parties. When a petition is dismissed, the petitioning
22 party must be informed of the reason for the dismissal. The petitioning party may file an appli-
23 cation for leave to appeal the director's decision to the civil service commission. A petitioner
24 whose petition is dismissed cannot file another petition in the same unit within the 12-month
25 period following the date of the dismissal.

26 **(c) Intervenors.** When the state personnel director authorizes an election, another organization
27 may intervene and be placed on the ballot if the organization submits suitable evidence that at
28 least 10 percent of the eligible employees actively at work in the unit wish to be represented by
29 the intervening organization.

30 **(d) Certification elections.** Certification elections are conducted and supervised by the state
31 personnel director upon determination of the eligible voters by agreement or hearing. The
32 ballots for a certification election must contain an appropriate space for employees to indicate
33 that no representation is desired.

6-6.3 Certification; Run-off Election

The state personnel director shall certify a labor organization as the exclusive representative of all eligible employees in a unit if the organization receives a majority of valid ballots cast in the certification election. If none of the choices on the ballot receives a majority of the votes cast, the state personnel director shall conduct a run-off election. The run-off ballot contains only the two choices receiving the most and the second most votes in the original election.

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(c) **Window period.** If the collective bargaining agreement is a unitary agreement, election petitions may be accepted only during a 2-month window period ending 6 months before the expiration of the agreement that would otherwise constitute a bar to an election. If the agreement is divided into economic and noneconomic subsections, election petitions may be accepted only during a 2-month window period ending 6 months before the expiration of the noneconomic section of the agreement.

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6-6.4 Excluded Positions

(a) **Designation.** The state employer, in consultation with the appointing authorities, shall designate the excluded positions outside the department of civil service-. If the state employer intends to change the designation of an eligible position to an excluded position, the state employer shall give written notice to any affected exclusive representative at least 29 calendar days before the designation becomes effective.

(b) **Review of designation.** If an exclusive representative disagrees with an intended designation of the state employer, the exclusive representative may petition the state personnel director to review the designation, resolve the dispute. The exclusive representative must file its petition with the director no later than 28 calendar days after the date of the notice of intent.

(c) **Procedure.** If a petition is filed, the director may solicit additional information from interested persons and may hold an informal conference to discuss the intended designation. The director shall administratively determine whether a position is an excluded position.

(d) **Appeal to commission.** The decision of the director is final unless the state employer, the attorney general, the secretary of state, or an exclusive representative aggrieved by the decision files an application for leave to appeal with the civil service commission within 14-28 calendar days after the decision.

(e) **Exclusive procedure.** The procedure authorized in this rule is the exclusive procedure for resolving disputes concerning the designation of an eligible position as an excluded positions.

6-7 Dues and Fees

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6-7.5 Annual Notice of Rights

The state personnel director shall annually give written notice of each of the following rights and obligations to each exclusively-represented ~~classified~~ employee:

- (a) The right of an eligible classified employee to join or not join an exclusive representative without affecting the employment status of the employee.
- (b) If the employee chooses to join the exclusive representative, the right not to maintain membership in an exclusive representative to retain a job.
- (c) If the employee chooses not to be a member of the exclusive representative, the obligation to pay a service fee as provided in rule 6-7.2.
- (d) If the employee chooses not to be a member of the exclusive representative and is obligated to pay a service fee, the rights guaranteed under federal and state law.
- (e) The prohibitions against political activities and union activities during actual-duty time.

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6-9 Negotiations and Impasse

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6-9.7 Secondary Negotiations and Agreements

- (a) Approval of secondary agreement. If secondary negotiations are authorized in a primary agreement, ~~the secondary negotiations must be concluded no later than 3 months after the date the civil service commission approved the primary agreement. The any~~ secondary collective bargaining agreement must be submitted to the civil service commission for review as provided in rule 6-12. If the parties cannot reach agreement in secondary negotiations, either party may file a request for impasse panel assistance under the provisions of rule 6-9.4, do not submit ~~timely a complete proposed secondary agreement to the commission for review, the negotiations are considered at impasse and all matters related to mandatory subjects of bargaining are referred to an impasse panel. The impasse panel shall recommend to the commission a binding secondary agreement to regulate conditions of employment for employees in the department.~~

(b) Expiration and continuation of secondary agreement. A secondary agreement shall automatically expire on the date of expiration of the primary agreement under which the secondary agreement was approved, unless the civil service commission has approved an extension of the secondary agreement. The commission may modify a secondary agreement before approving an extension.

(1) Automatic extension with extension of primary agreement. If the civil service commission authorizes the extension of a primary agreement, any secondary agreement approved under that primary agreement is automatically extended for the same period, unless the commission expressly provides otherwise.

(2) Extension of secondary agreement under new primary agreement.

(A) If the civil service commission considers a new primary agreement or primary impasse recommendation, the parties may jointly request that the commission extend an existing secondary agreement during secondary negotiations under a new primary agreement. An approved extension cannot exceed 12 months.

(1) If, by the end of the approved extension period, the parties have not reached agreement on a new secondary agreement and neither of the parties has requested impasse panel assistance, the existing secondary agreement expires.

(2) If, by the end of the approved extension period, the parties have submitted a new secondary agreement to the civil service commission or one of the parties has requested impasse panel assistance, the existing secondary agreement shall continue in effect until the commission takes final action on the secondary agreement or the impasse panel recommendation.

(B) If the civil service commission approves a new primary agreement and, by the effective date of the new primary agreement, the commission has not approved an extension of an existing secondary agreement, the secondary agreement expires on the effective date of a new primary agreement.

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6-12 Commission Review and Action

6-12.1 Commission Review of Agreements, Impasse Panel Recommendations, and Coordinated Compensation Recommendations

It is the policy of the civil service commission to encourage agreement between the parties. However, the commission retains the final authority to approve, modify, or reject, in whole or in part, all

[primary and secondary](#) collective bargaining agreements, impasse panel recommendations, and coordinated compensation recommendations submitted to the commission. Therefore, if the parties reach a proposed collective bargaining agreement, the parties shall submit a copy of the proposed agreement to the commission for review. If the parties are at impasse, the impasse panel shall submit its recommendations for impasse resolution to the commission. The commission shall review each proposed agreement, impasse panel recommendation, and coordinated compensation recommendation. The commission shall approve, modify, or reject, in whole or in part, each agreement and recommendation.

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Chapter 9: Definitions

9-1 Definitions

Unless the context clearly provides otherwise, the following terms in the civil service rules and regulations are defined as follows:

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[9-1.20 Class Cluster](#)

[Class cluster](#) means [two or more classifications identified by the state personnel director as having substantially equivalent qualifications for the purposes of implementing a job change, layoff, or recall.](#)

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[9-1.2827 Confidential Position](#)

Confidential position means [each of the following positions in the classified service:](#)

(a) ~~a~~[A](#) position assigned responsibility for directly assisting a person occupying a managerial position.

(b) [A position assigned responsibility for investigating other employees.](#)

(c) A position that is responsible for providing personal protection services to state elected officials.

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Rule 9-1.95, "Prohibited Subjects of Bargaining," has been moved to Rule 6-3.2(b)

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9-1.123 Technical Decision

Technical decision includes each of the following individual decisions:

- (a) **Technical classification decision** means a civil service staff decision (1) classifying a position in the classified service or (2) making a working-out-of-class determination.
- (b) **Technical qualification decision** means a civil service staff decision determining the qualifications and fitness of a candidate for a position in the classified service.
- (c) **Technical disbursement decision** means a civil service staff decision approving or disapproving disbursements for personal services.
- (d) **Technical appointment decision** means (1) a decision of an appointing authority appointing a candidate to a position in the classified service or (2) a decision of civil service staff certifying or revoking an appointment to a position in the classified service.

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9-1.131 Working out of Class

Working out of class means being temporarily assigned to and performing the duties and responsibilities of another classification, in accordance with the standards in rule 4-5.